



Appeal Decision

Hearing held on 8 March 2023

Site visit made on 8 March 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2023

Appeal Ref: APP/L2630/W/22/3292865

Western Farm, Plantation Road, Aslacton, NR15 2ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by CM Agriculture Ltd against the decision of South Norfolk District Council.
 - The application Ref 2021/0516, dated 4 March 2021, was refused by notice dated 15 October 2021.
 - The development proposed is provision of 10 tied caravans to provide workers accommodation ancillary to specialist poultry transport depot.
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Decision

1. The appeal is dismissed.

Main Issues

2. The statement of common ground confirms that the parties are now in agreement that, having considered the submitted ecology report, suitable measures to compensate or enhance the site for birds, bats and hedgehogs can be subject to a condition and no further objection is raised. On this basis the Council is no longer pursuing reason for refusal 4 as outlined in its decision notice.
3. Therefore, the main issues are:
 - whether there is an essential need for rural workers to live permanently at their place of work; and
 - whether the site represents an appropriate location having regard to the council's spatial strategy; and access to services and facilities on foot.

Reasons

Essential Need

4. Policy DM1.3 of the South Norfolk Local Plan, Development Management Policies Document 2015 (DPD) sets out permission for development in the Countryside will only be granted if specific Development Management Policies allow for it. Policy DM2.11 permits development in the Countryside to meet the housing needs of full-time workers in agriculture, forestry and other essential workers connected with that land, where certain criteria are met.

5. This includes that a functional need has been demonstrated for one or more full time workers to be readily available at all times for the enterprise and the functional need could not be met by another existing dwelling in the area that is available and suitable.
6. The proposal is to provide workers accommodation in connection with the appellants business which provides services to poultry businesses operating in both Norfolk, Suffolk, Lincolnshire and Cambridge. The appeal site is located centrally within the wider depot and includes its offices and welfare services.
7. Employees work 6 or 7 days a week and travel together as a group in minibuses to their places of work, cleaning poultry cages and equipment as well as delivering vaccinations. The appellant also provides trained poultry catchers. The workers can sometimes travel to multiple sites in a day.
8. The proposal would enable 40 workers to be accommodated in 10 caravans, and these would be employees who were new to the business and may be working short term contracts to cover peak periods before Christmas. Being based at the appeal site would enable more support and training and better oversight of welfare requirements.
9. The appellant has indicated that other properties within the nearby settlements of Long Stratton, Attleborough and Wymondham are not available at a reasonable cost in order to provide suitable alternative accommodation. In addition being based in these locations would increase the need for travel to and from the appeal site at the start and end of each day. However, they confirmed existing workers are already based within adjoining settlements, with some located further away in Great Yarmouth.
10. I do not doubt the appellant's evidence that it is more difficult to manage the employees remotely, than it would be if they were residing on site and I also accept that there would be positive impacts in terms of their welfare and wellbeing. However, I am not persuaded, on the basis of the evidence before me, that there is an essential need for rural workers to live on the appeal site and that these benefits arising from co-location could be met by accommodation provided in less rural locations.

Temporary Permission

11. It has been put to me that consideration should be given to whether a temporary permission would be appropriate. Whilst a temporary permission can be appropriate for new enterprises, this is so that confidence can be gained as to whether a viable business can be built, before allowing for a permanent dwelling. This does not remove the need to demonstrate a functional need for someone to live on the site in connection with the proposed rural enterprise. The Planning Practice Guidance sets out when it may be appropriate to grant planning permission for a temporary period and states that there is no presumption that a temporary grant of planning permission will then be granted permanently.

12. Temporary permissions can be appropriate where the planning circumstances will change in a particular way at the end of that period. However, I am not persuaded that the need for the accommodation would cease within a short time period and the appellant accepted that the availability of alternative accommodation was unlikely to change within a three year period. On this basis I do not consider it would be appropriate to allow the development on a temporary basis.

Affordable Housing

13. It has been put to me that the proposal could meet the definition of affordable housing, as set out within Policy 4 of the Joint Core Strategy for Broadland, Norwich and South Norfolk (JCS) and policy DM3.2 of the DPD. However, I have nothing before me which indicates that the accommodation would be available to meet a proven local need and there is no legal agreement to secure the development as affordable housing or ensure appropriate nomination rights for the Council.
14. The definition of affordable housing as set out in Annex 2 of the National Planning Policy Framework (the Framework), includes other low cost homes for sale, at least 20% below local market value. However, even if I were to accept that mobile homes were considered low cost housing, they would not be offered for sale and therefore would not meet that definition. Therefore, I given this argument no weight in the planning balance.

Fallback Position

15. The appellant has also indicated that there is a fallback position for seasonal workers under Part 5, Class A of the Town and Country Planning (General Permitted Development) Order, which permits the use of land, as a caravan site, subject to specific circumstances. This is linked to the Caravan Sites and Control of Development Act 1960, which sets out in Schedule 1, paragraph 7 that the use of a caravan site of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation.
16. However, the Council confirmed at the hearing that the site has a certificate of lawfulness for use as an HGV haulage yard and is therefore not agricultural land. The proposed fallback position has not been established and the appellant went onto suggest that the fallback could be in connection with siting caravans at other sites where staff were working. Therefore, as the suggested fallback position does not relate to the appeal site, I have given it no weight in the planning balance.

Alternative Accommodation – House in Multiple Occupation (HMO)

17. The appellant has indicated that it would not be possible for the accommodation needs of its workers to be met through an HMO as they are not generally supported. Reference was made to an example in a neighbouring authority where an application made by the appellant was refused, however no precise details have been provided within the evidence before me.
18. The Council confirmed that there are no specific policies for HMOs within the DPD but that it has previously granted HMO type accommodation, albeit the example given was where a manager resided on the site.

19. Whilst I accept that there can be a number of issues to address in order to ensure appropriate amenity standards for both future occupiers of HMOs and the wider community, I do not accept the appellant's argument that it would not be possible to secure planning permission for such a proposal within South Norfolk District. The Council confirmed it does not have any Article 4 directions prohibiting HMOs within its district.
20. Therefore, on the basis of the evidence before me, I have given limited weight to the appellant's suggestion that HMOs could not provide a suitable alternative for its workers.

Conclusion – Essential Need

21. In conclusion there is insufficient evidence to demonstrate that there is an essential need for rural workers to live at the appeal site as the work that is carried out is not intrinsically linked to the appeal site. Whilst this location operates as a headquarters, there is a lack of evidence that any accommodation needs could not be met at an alternative location.
22. The proposal fails to accord with Policy DM1.3 (1) of the DPD which sets out permission for development in the Countryside will only be granted if specific Development Management Policies allow for it and Policy DM2.11 which requires a demonstrated functional need for one or more full-time workers to be readily available at all times for the enterprise.

Access to services and facilities

23. Policy DM 3.10 requires all development to support sustainable transport and development objectives and utilise all opportunities to integrate with local sustainable transport networks, be designed to reduce the need to travel and to maximise the use of sustainable forms of transport appropriate to the location.
24. Paragraph 79 of the Framework promotes sustainable development in rural areas, through locating housing where it will enhance or maintain the vitality of rural communities. It recognises that groups of smaller settlements may support services in a village nearby.
25. The Framework at paragraph 110a requires development proposals to ensure appropriate opportunities to promote sustainable transport modes can be taken up. Sustainable transport modes are defined within the Framework as any efficient, safe and accessible means of transport including car sharing.
26. The site is located approximately 5 miles from Long Stratton. With the larger settlements of Attleborough and Wymondham approximately 20-25 minutes to travel to from the appeal site by car.
27. There is a public right of way (PROW) which links the site to a bus stop on Woodrow Lane, and from here buses run between Diss and Norwich, albeit that the services are limited at evenings and weekends, when occupiers are more likely to be on site, having finished work. The route via the PROW is also unlikely to be desirable during the evenings or during winter months. As such, the bus service is unlikely to be a realistic alternative to the convenience of travel by private means of transport.

28. The appellant has set out that occupants of the proposed caravans are unlikely to be reliant on buses as there would be opportunities to access shared transport, in the form of minibuses provided by the company. They confirmed that these would also be available for use by employees during the evening and weekend.
29. However, paragraph 112 of the Framework gives priority to pedestrian and cycle movements, and paragraph 130 expects developments to create places that are safe, inclusive and accessible and which promote health and wellbeing.
30. The lack of surfaced footpaths or streetlighting would make it less attractive for people to walk. Whilst recreational cycling may be popular in the area due to the rural nature of the road network, I am not persuaded that this provides sufficient evidence that cycling would be a realistic mode of transport to access the day to day services and facilities having regard to the distance to the nearest town.
31. Occupiers of the caravans would have limited access to any independent means of travel and would be reliant on the shared mini bus to access any services and facilities. This lacks resilience and would not promote health and wellbeing, which the Framework seeks to achieve by directing development towards the most sustainable locations.
32. As such, I cannot conclude that the proposed accommodation would be located where it would enhance or maintain the vitality of rural communities as envisaged by paragraph 79 of the Framework and it would not be the sustainable development that it seeks to promote in rural areas.
33. In conclusion, the proposed development would not provide a suitable location for housing, having regard to Policy DM 3.10 (1) which requires development to support sustainable transport modes. It would also fail to accord with Policies 1 and 6 of the JCS which together promote sustainability and encourage walking and cycling as the primary means of travel with public transport for wider access.

Spatial Strategy

34. Policy DM 1.3 (2) of the DPD sets out that permission for development in the Countryside will only be granted if it is able to demonstrate overriding benefits in terms of economic, social and environmental dimensions. Although this does set a high bar in its use of the word overriding, where there is a permissive policy framework that allows for new housing development within settlement boundaries, on allocated sites and through a number of exceptions in the countryside, it is perhaps unsurprising that any further development in the countryside would need to be particularly justified.

Economic

35. There is an acceptance that there are nationwide challenges with recruitment and retention within the industry and that there is a recognised shortage of workers to carry out the tasks which the appellant's company is contracted to provide. This is evidenced by the letter from the Department of Environment Food and Rural Affairs, dated August 2021.

36. The appellant spoke at length about the impacts that the lack of certainty surrounding being able to house workers had on the business and the efforts that they have taken to source alternatives. They also outlined the ripple effect that not being able to provide workers to fulfil contracts would have on the factories and farms that they work with. In turn, these farms and factories would only be able to expand to meet consumer demands if they had certainty that there would be workers available to carry out the plucking and other tasks previously outlined.
37. Whilst I do not doubt the oral evidence presented at the hearing, there is nothing in the written evidence before me to quantify the economic benefits that would be delivered if accommodation were provided on site, or the risks to the business if a solution could not be found to meet these needs and this reduces the amount of weight that I can attribute to this benefit. Therefore, the weight attributed to this benefit would be moderate.

Social

38. The appellant has set out that the social benefits would be the provision of housing/accommodation for workers that would enable the applicant to employ and retain people. However, I have found no functional need for the accommodation to be provided on the appeal site and therefore the social benefits of providing housing could also be delivered beyond the appeal site and therefore I can only attribute limited weight to this benefit.
39. The Council acknowledge that they can no longer demonstrate a 5 year housing land supply (5YHLS) as a result of nutrient neutrality affecting delivery. The Council were unable to outline the extent of the shortfall or the number of houses currently affected by this issue.
40. The provision of 10 units of accommodation on the appeal site would ensure that additional pressure was not placed on demand for housing in the local area and I have given modest weight to this benefit.

Environmental

41. There would be some environmental benefits arising from the co-location of 40 workers on the appeal site as travel to work sites would be via a mini bus, minimising the need for individual journeys at the start and end of each day. However, this benefit would be off-set by any personal journeys associated with accessing services and facilities. There would be minor negative environmental and social effects arising from the location in terms of the use of natural resources and the accessibility of local services. This is an adverse matter to which I afford moderate weight.

Conclusion – Spatial Strategy

42. In conclusion, the location for the proposed development would not be in accordance with the spatial strategy, and whilst cumulatively the appeal proposal would give rise to a number of benefits of variable significance, including the appreciable weight to be given to the economic benefits of the proposal, these would not amount to the overriding benefits necessary to demonstrate that development should take place in the countryside. The proposed scheme would therefore be contrary to DPD Policy DM1.3 which seeks to carefully manage new development in countryside locations in accordance with the over-arching spatial strategies for South Norfolk.

Other Matters

43. The appeal scheme proposes dwellings on a site that lies within the Zone of Influence of a number of Norfolk Habitats sites as set out within The Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy 2021 (GIRAMS).
44. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the Norfolk Habitats Sites. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
45. Since the development is for ten units of accommodation, the number of additional recreational visitors would be modest and the likely effects on the Norfolk Habitats Sites from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site.
46. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
47. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the zone of influence, have a likely significant effect on the interest features of the aforementioned sites. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
48. The GIRAMS sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication, and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the Norfolk Habitats Sites.
49. The appellants have submitted a planning obligation for the per dwelling contribution required to fund the Norfolk GIRAMS. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
50. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

Nutrient neutrality

51. A Written Ministerial Statement (WMS) on river basin catchments and relevant watercourses beyond those previously identified as being in 'unfavourable' condition due to high nutrient levels, and protected sites under the Habitat Regulations was issued on 16 March 2022. As a result of the WMS, Natural England updated the conservation status of The Broads Special Area of Conservation (SAC), regarding unfavourable nutrient levels.
52. Nutrient neutrality requires that competent authorities under the Habitat Regulations carefully consider the nutrient impacts of projects on Habitats sites, and whether those impacts may have an adverse effect on the integrity of a Habitats site that requires mitigation. The Council have advised that the appeal site is within the identified catchment area of the Broads Special Area of Conservation (SAC).
53. The proposal for new residential accommodation has the potential to lead to an increase in additional nutrients reaching the SAC due to the implications of foul and surface water drainage systems. Consequently, the proposal would likely have a significant adverse effect on the integrity of the SAC.
54. The appellant's have indicated that they may have a bespoke solution based on the existing sustainable urban drainage system which could reduce nutrient levels below the additional loading, the details have not been formally submitted as part of the appeal and Natural England have not been consulted on the details of the proposed mitigation.
55. Therefore, given the lack of clarity as to what may be required and uncertainty on the time it may take to have a strategy in place with practical solutions to resolve this matter long term and for the lifetime of the development, I am not satisfied that it would be reasonable to impose a Grampian condition to resolve this matter.
56. This is also not an incidental implication of the proposal but a matter of principle as to whether or not the scheme could proceed in an acceptable manner without causing harm to the integrity of the SAC and contrary to the statutory duty upon the competent authority which accompanies it.
57. Whilst the effect of the proposal would be small, in combination with other development, based on a precautionary approach and the evidence before me, I conclude that the appeal scheme would be likely to have both a significant adverse effect on the integrity of the SAC due to the potential for an increase in nutrients entering the watercourse.
58. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the designated sites' conservation objectives. However, in the absence of an agreed mitigation strategy to overcome the effects that have been identified in respect of nutrients, I cannot be satisfied that the appeal proposal would not result in significant adverse effect to the integrity of the SAC.

59. The proposal would therefore fail to comply with the requirements of the Regulations as well as Paragraph 180(a) of the Framework which states that where significant harm to biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused. As a result, it would not accord with Policy 18 of the JCS which seeks to ensure no detriment to the Broadland SPA, Broadland Ramsar and Broads SAC.

Planning Balance

60. It is not disputed that the Council is currently unable to demonstrate a 5 year supply of deliverable housing sites. Therefore, paragraph 11 of the Framework is engaged, whereby planning permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 sets out that these policies include those relating to habitat sites. Given my findings, in relation to the Broads Special Area of Conservation, there is a clear reason for refusing the development proposed and I am not required to apply the tilted balance in this respect.
61. Therefore, the identified adverse impacts of the development, the moderate negative environmental and social effects arising from the location in terms of the use of natural resources and the accessibility of local services and the significant environmental harm resulting from the adverse effect on the integrity of designated sites contrary to the requirements of the Habitat Regulations would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
62. Whilst the scheme would result in some economic and social benefits these would not constitute overriding benefits that outweigh the significant harms identified. Nor do they amount to material considerations that indicate a decision other than in accordance with the development plan. Consequently, the appeal proposal should not succeed.

Conclusion

63. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robert Willetts - CM Agriculture Ltd
Tom Pearson - CM Agriculture Ltd
Bruce Hart – Paul Robinson Partnership
Jason Parker – Parker Planning Services

FOR THE LOCAL PLANNING AUTHORITY:

Peter Kerrison BSc Hons MSC AssocRTPI
Christopher Raine BA Hons MRTPI
Aaron Pritty BA Hons
John Shaw – Norfolk County Council

INTERESTED PARTIES:

Geoff Gamble – Chair of Aslacton Parish Council
Cheryl Shulver – Vice Chair of Aslacton Parish Council